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AMENDED IN ASSEMBLY JANUARY 15, 2004
AMENDED IN ASSEMBLY AUGUST 25, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1667

Introduced by Assembly Member Kehoe
(Principal coauthor: Assembly Member Pavley)
(Principal coauthor: Senator Escutia)
(Coauthors: Assembly Members Corbett, Frommer, Goldberg,
Koretz, La Suer, Nakano, Oropeza, Parra, Reyes, and Spitzer)
(Coauthors: Senators Machado, Margett, and Ortiz)

February 21, 2003

An act to amend Section 803 of, to add Sections 801.1, ~~801.2~~, and 803.5 to, and to repeal Section 805.5 of, the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1667, as amended, Kehoe. Criminal procedure.

Existing law establishes various statutes of limitations for various offenses. ~~Existing law provides that where the identity of the suspect is conclusively proved by DNA analysis, the statute of limitations shall be one year from the date of the identification, or 10 years from the date of the offense, whichever day is later. Other~~ Certain provisions of existing law extend the statutes of limitations for certain sex offenses, and revive, for purposes of prosecution, certain offenses for which the statute of limitations had expired. The provisions reviving expired

statutes of limitations have been held by the United States Supreme Court to be unconstitutional.

This bill would repeal those provisions of law that have been held to be unconstitutional. *It would reorganize certain provisions relating to limitations on filing criminal charges.* This bill would also provide that in regard to the statutes of limitations for certain sex offenses alleged to have been committed when the victim was under 18 years of age, prosecution may be commenced ~~any time~~ *within one year of a report to law enforcement made prior to the victim's 30th birthday with specified corroboration, or within one year of a report made at any age with a greater level of corroboration, as provided.*

~~The bill would also provide that if those provisions do not apply, then prosecution for specified felony sex offenses could commence within 10 years after the commission of the offense. This bill would delete the 10 year limitation in connection with DNA analysis identification, as described, and would make other technical changes.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 801.1 is added to the Penal Code, to
2 read:

3 ~~801.1. Notwithstanding any other limitation of time described~~
4 ~~in this chapter, prosecution for an offense described in Section 261,~~
5 ~~286, 288, 288.5, 288a, 289, or 289.5, alleged to have been~~
6 ~~committed when the victim was under the age of 18 years, may be~~
7 ~~commenced any time prior to the victim's 30th birthday.~~

8 SEC. 2. ~~Section 801.2 is added to the Penal Code, to read:~~

9 ~~801.2. Notwithstanding any other limitation of time described~~
10 ~~in this chapter, if Section 801.1 does not apply, prosecution for~~
11 ~~801.1. Prosecution for a felony offense described in~~
12 ~~subparagraph (A) of paragraph (2) of subdivision (a) of Section~~
13 ~~290 shall be commenced within 10 years after commission of the~~
14 ~~offense.~~

15 SEC. 3. ~~Section 803 of the Penal Code is amended to read:~~

16 ~~803. (a) Except as provided in this section, a limitation of~~
17 ~~time prescribed in this chapter is not tolled or extended for any~~
18 ~~reason.~~

~~(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.~~

~~(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:~~

~~(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.~~

~~(2) A violation of Section 72, 118, 118a, 132, or 134.~~

~~(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.~~

~~(4) A violation of Section 1090 or 27443 of the Government Code.~~

~~(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.~~

~~(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.~~

~~(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.~~

~~(8) A violation of Section 22430 of the Business and Professions Code.~~

~~(9) A violation of Section 10690 of the Health and Safety Code.~~

~~(10) A violation of Section 529a.~~

~~(11) A violation of subdivision (d) or (e) of Section 368.~~

~~(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.~~

~~(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could~~

~~1 have reasonably been discovered, with regard to offenses under
2 Division 7 (commencing with Section 13000) of the Water Code,
3 under Chapter 6.5 (commencing with Section 25100) of, Chapter
4 6.7 (commencing with Section 25280) of, or Chapter 6.8
5 (commencing with Section 25300) of, Division 20 of, or Part 4
6 (commencing with Section 41500) of Division 26 of, the Health
7 and Safety Code, or under Section 386, or offenses under Chapter
8 5 (commencing with Section 2000) of Division 2 of, Chapter 9
9 (commencing with Section 4000) of Division 2 of, Chapter 10
10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5
11 (commencing with Section 22440) of Division 8 of, the Business
12 and Professions Code.~~

~~13 (f) (1) Notwithstanding any other limitation of time described
14 in this chapter, a criminal complaint may be filed within one year
15 of the date of a report to a California law enforcement agency by
16 a person of any age alleging that he or she, while under the age of
17 18 years, was the victim of a crime described in Section 261, 286,
18 288, 288a, 288.5, 289, or 289.5.~~

~~19 (2) This subdivision applies only if both of the following occur:
20 (A) The limitation period specified in Section 800, 801, 801.1,
21 or 801.2, whichever is later, has expired.~~

~~22 (B) The crime involved substantial sexual conduct, as
23 described in subdivision (b) of Section 1203.066, excluding
24 masturbation that is not mutual, and there is independent evidence
25 that clearly and convincingly corroborates the victim's allegation.
26 No evidence may be used to corroborate the victim's allegation
27 that otherwise would be inadmissible during trial. Independent
28 evidence does not include the opinions of mental health
29 professionals.~~

~~30 (g) (1) Notwithstanding any other limitation of time described
31 in this chapter, a criminal complaint may be filed within one year
32 of the date on which the identity of the suspect is conclusively
33 established by DNA testing, if both of the following conditions are
34 met:~~

~~35 (A) The crime is one that is described in subparagraph (A) of
36 paragraph (2) of subdivision (a) of Section 290.~~

~~37 (B) The offense was committed prior to January 1, 2001, and
38 biological evidence collected in connection with the offense is
39 analyzed for DNA type no later than January 1, 2004, or the
40 offense committed on or after January 1, 2001, biological evidence~~

1 collected in connection with the offense is analyzed for DNA type
2 no later than two years from the date of the offense.

3 (2) For purposes of this section, “DNA” means
4 deoxyribonucleic acid.

5 (h) For any crime, the proof of which depends substantially
6 upon evidence that was seized under a warrant, but which is
7 unavailable to the prosecuting authority under the procedures
8 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th
9 703, *People v. Superior Court (Bauman & Rose)* (1995) 37
10 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to
11 claims of evidentiary privilege or attorney work product, the
12 limitation of time prescribed in this chapter shall be tolled from the
13 time of the seizure until final disclosure of the evidence to the
14 prosecuting authority. Nothing in this section otherwise affects the
15 definition or applicability of any evidentiary privilege or attorney
16 work product.

17 (i) (1) In a criminal investigation involving child sexual abuse
18 as described in subdivision (f), when the limitations period set
19 forth therein has not expired, that period shall be tolled from the
20 time a party initiates litigation challenging a grand jury subpoena
21 until the end of that litigation, including any associated writ or
22 appellate proceeding, or until the final disclosure of evidence to
23 the investigating or prosecuting agency, if that disclosure is
24 ordered pursuant to the subpoena after the litigation.

25 (2) Nothing in this subdivision affects the definition or
26 applicability of any evidentiary privilege.

27 (3) This subdivision shall not apply where a court finds that the
28 grand jury subpoena was issued or caused to be issued in bad faith.

29 (j) As used in this chapter, Section 289.5 refers to the statute
30 enacted by Chapter 293 of the Statutes of 1991 relating to
31 penetration by an unknown object.

32 ~~SEC. 4.~~

33 *SEC. 2. Section 803 of the Penal Code is amended to read:*

34 803. (a) Except as provided in this section, a limitation of
35 time prescribed in this chapter is not tolled or extended for any
36 reason.

37 (b) No time during which prosecution of the same person for
38 the same conduct is pending in a court of this state is a part of a
39 limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, or 134.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter

6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) For purposes of this subdivision, a “responsible adult” or “agency” means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or, 801, or 801.1 has expired.

(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in either Section 800 or, 801, or 801.1.

~~(3) (A) This subdivision applies to a cause of action arising before, on, or after January 1, 1990, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:~~

~~(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.~~

~~(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.~~

~~(iii) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether~~

~~retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.~~

~~(iv) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is or was filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.~~

~~(B) (i) If the victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.~~

~~(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.~~

~~(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, including any review proceeding, shall not be binding upon refiling.~~

~~(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by~~

1 *a person under the age of 30 alleging that he or she, while under*
2 *18 years of age, was the victim of a crime described in Section 261,*
3 *286, 288, 288a, 288.5, 289, or 289.5.*

4 *(2) This subdivision applies only if both of the following occur:*

5 *(A) The limitation period specified in Section 800, 801, or*
6 *801.1 has expired.*

7 *(B) The crime involved substantial sexual conduct, as*
8 *described in subdivision (b) of Section 1203.066, excluding*
9 *masturbation that is not mutual, and the victim's allegation is*
10 *corroborated by such other evidence as shall tend to connect the*
11 *defendant with the commission of the offense. No evidence may be*
12 *used to corroborate the victim's allegation that otherwise would be*
13 *inadmissible during trial.*

14 *(h) (1) Notwithstanding any other limitation of time described*
15 *in this chapter, a criminal complaint may be filed within one year*
16 *of the date of a report to a California law enforcement agency by*
17 *a person of any age alleging that he or she, while under the age of*
18 *18 years, was the victim of a crime described in Section 261, 286,*
19 *288, 288a, 288.5, 289, or 289.5.*

20 *(2) This subdivision applies only if both of the following occur:*

21 *(A) The limitation period specified in Section 800 or, 801, or*
22 *801.1 has expired.*

23 *(B) The crime involved substantial sexual conduct, as*
24 *described in subdivision (b) of Section 1203.066, excluding*
25 *masturbation that is not mutual, and there is independent evidence*
26 *that clearly and convincingly corroborates the victim's allegation.*
27 *No evidence may be used to corroborate the victim's allegation*
28 *that otherwise would be inadmissible during trial. Independent*
29 *evidence does not include the opinions of mental health*
30 *professionals.*

31 ~~*(3) (A) This subdivision applies to a cause of action arising*~~
32 ~~*before, on, or after January 1, 1994, the effective date of this*~~
33 ~~*subdivision, and it shall revive any cause of action barred by*~~
34 ~~*Section 800 or 801 if any of the following occurred or occurs:*~~

35 ~~*(i) The complaint or indictment was filed on or before January*~~
36 ~~*1, 1997, and it was filed within the time period specified in this*~~
37 ~~*subdivision.*~~

38 ~~*(ii) The complaint or indictment is or was filed subsequent to*~~
39 ~~*January 1, 1997, and it is or was filed within the time period*~~
40 ~~*specified within this subdivision.*~~

~~(iii) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.~~

~~(iv) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.~~

~~(B) (i) If the victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.~~

~~(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.~~

~~(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, by any trial court or any intermediate appellate court, shall not be binding upon refiling.~~

~~(h)~~

~~(i) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person under 21 years of age, alleging that he or she, while under 18 years of age, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.~~

~~(2) This subdivision applies only if both of the following occur:~~

~~(A) The limitation period specified in Section 800 or 801 has expired.~~

~~(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and there is independent evidence that corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.~~

~~(3) This subdivision applies to a cause of action arising before, on, or after January 1, 2002, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if the complaint or indictment was filed within the time period specified by this subdivision.~~

~~(i) (1) Notwithstanding the limitation of time described in Section 800, the limitations period for commencing prosecution for a felony offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, where the limitations period set forth in Section 800 has not expired as of January 1, 2001, or the offense is committed on or after January 1, 2001, shall be 10 years from the commission of the offense, or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later, provided, however, that the one-year period from the establishment of the identity of the suspect shall only apply when either if both of the following conditions is are met:~~

~~(A) For an~~ *The crime is one that is described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290.*

1 (B) *The offense was committed prior to January 1, 2001, and*
2 *biological evidence collected in connection with the offense is*
3 *analyzed for DNA type no later than January 1, 2004.*

4 ~~(B) For an, or the offense was committed on or after January~~
5 ~~1, 2001, and biological evidence collected in connection with the~~
6 ~~offense is analyzed for DNA type no later than two years from the~~
7 ~~date of the offense.~~

8 ~~(2) In the event the conditions set forth in subparagraph (A) or~~
9 ~~(B) of paragraph (1) are not met, the limitations period for~~
10 ~~commencing prosecution for a felony offense described in~~
11 ~~subparagraph (A) of paragraph (2) of subdivision (a) of Section~~
12 ~~290, where the limitations period set forth in Section 800 has not~~
13 ~~expired as of January 1, 2001, or the offense is committed on or~~
14 ~~after January 1, 2001, shall be 10 years from the commission of the~~
15 ~~offense.~~

16 ~~(3) For purposes of this section, “DNA” means~~
17 ~~deoxyribonucleic acid.~~

18 (j) For any crime, the proof of which depends substantially
19 upon evidence that was seized under a warrant, but which is
20 unavailable to the prosecuting authority under the procedures
21 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th
22 703, *People v. Superior Court (Bauman & Rose)* (1995) 37
23 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to
24 claims of evidentiary privilege or attorney work product, the
25 limitation of time prescribed in this chapter shall be tolled from the
26 time of the seizure until final disclosure of the evidence to the
27 prosecuting authority. Nothing in this section otherwise affects the
28 definition or applicability of any evidentiary privilege or attorney
29 work product.

30 (k) (1) In a criminal investigation involving child sexual abuse
31 as described in subdivision (f), (g), or (h), when the limitations
32 period set forth therein has not expired, that period shall be tolled
33 from the time a party initiates litigation challenging a grand jury
34 subpoena until the end of that litigation, including any associated
35 writ or appellate proceeding, or until the final disclosure of
36 evidence to the investigating or prosecuting agency, if that
37 disclosure is ordered pursuant to the subpoena after the litigation.

38 (2) Nothing in this subdivision affects the definition or
39 applicability of any evidentiary privilege.

(3) This subdivision shall not apply where a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(l) As used in ~~subdivisions (f), (g), and (h)~~ *this chapter*, Section 289.5 refers to the statute enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

SEC. 3. Section 803.5 is added to the Penal Code, to read:

803.5. (a) If more than one time period described in this chapter applies, the time for commencing an action shall be governed by that period that expires the latest in time.

(b) Any change in the time period for the commencement of prosecution described in this chapter applies to any crime if prosecution for the crime was not barred on the effective date of the change by the statute of limitations in effect immediately prior to the effective date of the change.

(c) This section is declaratory of existing law.

~~*SEC. 5.*~~

SEC. 4. Section 805.5 of the Penal Code is repealed.